THE DECALOGUE JOURNAL

*A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS*

**Volume 2** **JUNE - JULY, 1952** **Number 5**

# *Judge Learned Hand .. Opinions ..*

**On the Spirit of Liberty:**

. . ."The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded.". . .

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**On Mr. Justice Cardozo:**

. . ."He has a lesson to teach us if we care to stop and learn; a lesson quite at variance with most that we practice, and much that we profess.". . .

* * * *

**On Mr. Justice Holmes:**

. . ."His mind, his nature, his attainments, his contribution, have had their fullest recognition, and will always have it, among those to whom life is complex and universals slippery and perilous; to whom truth is a dangerous experiment and man a bungling investigator.". . .

**On Conformity:**

. . ."Our dangers, as it seems to me, are not from the outrageous but from the conforming; not from those who rarely and under the lurid glare of obloquy upset our moral complaisance, or shock us with unaccustomed conduct, but from those, the mass of us, who take their virtues and their tastes, like their shirts and their furniture, from the limited patterns which the market offers.

* * * *

**On Social Tensions:**

. . ."Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined.". . .

—THE SPIRIT OF LIBERTY. Papers and addresses of Learned Hand. Collected, and with an introduction and notes, by Irving Dilliard. Knopf. $3.50.

# THE DECALOGUE JOURNAL

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BENJAMIN WEINTROUB, *Editor*


## IN THIS ISSUE



# INSTALLATION OF OFFICERS

## FRIDAY, JUNE 13

The Arrangements Committee in charge of the ceremonies of the Annual installation of officers and newly elected members of our Board of Managers announces that the principal speaker on this occasion will be Augustine J. Bowe, prominent civic leader and chairman, Commission on Human Relations, Chicago.

The installation will take place on Friday, June 13, in the Grand Ballroom of the Covenant Club. Luncheon will be served.

Judge A. L. Marovitz, Superior Court, Cook County, will be the installing officer. Roy I. Levinson is chairman of the installation committee. Harry D. Cohen is co-chairman.

### OFFICERS—1952 - 1953

HARRY A. ISEBERG - - - - - - *President*
PAUL G. ANNES - - - - *First Vice-President*
ELMER GERTZ - - - *Second Vice-President*
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NATHAN SCHWARTZ
BERNARD H. SOKOL
*MAYNARD WISHNER

*To be installed

# DECALOGUE GOLF OUTING

## TUESDAY, JULY 29th

The Decalogue Society's Eighteenth Annual Golf Outing and Dinner Dance is scheduled this year for Tuesday, July 29, at St. Andrews Country Club, West Chicago, Illinois.

Reserve this date for an all day of recreation—open air and intra-mural. Bring your family, friends and clients. The Committee in charge of this event promises to surpass all former records in making this outing outstanding in the annals of our Society.

There will be available door prizes in abundance and, special prizes for best performances in golf and other activities.

# IN RETROSPECT

ARCHIE H. COHEN, President, The Decalogue Society of Lawyers

On June 30, 1952 my term of office expires and the duties and responsibilities of conducting the affairs of The Decalogue Society of Lawyers will fall upon my successor, Harry A. Iseberg, for whom I bespeak the full cooperation of our membership, a privilege which I have enjoyed during my administration.

I am deeply grateful to Elmer Gertz, Chairman of the Civic Affairs Committee, for the energy and zeal which marked the activities of his committee, especially as it concerned itself with the Cicero riots, and upon whose recommendation our Board of Managers forwarded a telegram to the Attorney General of the United States commending him for his decision to call a Federal Grand Jury to investigate and report possible violations of the Civil Rights Act. This committee also conducted a comprehensive study of the Cook County Grand Jury System, in which there participated Judges Frank M. Padden and William J. Tuohy, and Mr. Frederick T. Pretzie Jr., Assistant Operating Director of the Chicago Crime Commission. Miss Matilda Fenberg member of the Board of Managers, as Secretary, took an active part in the committee program.

The Professional Education Committee, of which Harry A. Iseberg, First Vice-President was chairman, presented an excellent series of lectures which proved highly interesting and instructive. The speakers and their subjects were as follows:

HARRY G. FINS—Law Practice Affecting the Illinois Legislature.

LEON M. DESPRES—Recent Decisions of the U. S. Supreme Court Affecting Civil Rights.

ELMER GERTZ—Current Aspects of Housing.

PAUL G. ANNES—Important Provisions of the 1951 Revenue Act.

BERNARD H. SOKOL—Your client and the Federal Subpoena.

L. LOUIS KARTON—Review of Recent Illinois Supreme and Appellate Court Decisions.

Our Society can point with pride to the activities of this committee, and I express my gratitude to its able chairman, who has headed the committee for the past six years.

The Forum Committee, under the chairmanship of Bernard H. Sokol, arranged six lectures on various subjects; these attracted also many non-members, and I express deep appreciation to him for his splendid efforts. The speakers and their subjects were as follows:

MORRIS E. FEIWELL—The Law School in the Hebrew University in Israel.

JUDGE HARRY M. FISHER—Our outmoded Judicial System.

ALBERT I. KEGAN—Fun, Fame and Fortune in Patents.

BENJAMIN WHAM—Law in the Perry Mason stories of Erle Stanley Gardner.

ALD. BENJAMIN BECKER and ALD. ROBERT MERRIAM—What is Happening in our City?

JOHN B. MARTINEAU—The Limit on Newspaper Comment about Judicial and other Official proceedings.

Under the chairmanship of Reuben S. Flacks, the Law Library Committee added many new books which were donated by several of our own members, and by Daniel A. Costigan, Master in Chancery of the Superior Court. The Society is grateful for the consideration shown by the donors.

Benjamin Weintroub, as Editor of The Decalogue Journal has been responsible for the high quality of our publication. Several of the articles appearing in our Journal have been reprinted with our permission in other Law Reviews. The many favorable comments upon the contents of The Decalogue Journal have given me great personal satisfaction, and I express to our editor the sincere thanks of our entire membership for his excellent work.

The Annual Patriotic Dinner at which Judge Harry M. Fisher was the recipient of Decalogue's Award for 1951, attracted the largest number of judges and lawyers ever in attendance at such an event. Chief Justice Joseph E. Daily and Associate Justices George W. Bristow and Walter V. Schaeffer of the Illinois

Supreme Court were present as well as Chief Justice Thomas E. Kluczynski of the Criminal Court of Cook County. The judiciary of our county was represented by Judges of the Illinois Appellate Court, First District, Judges of the Superior, Circuit and Criminal Courts, The Municipal Court of Chicago, the United States Attorney, the States Attorney, and the Deans of the law schools of the Universities of Chicago and Northwestern, Chicago-Kent College of Law, John Marshall Law School, DePaul, and numerous public officials as well as the presidents of the various local bar associations.

Judge Fisher delivered a truly inspiring message which appeared in the April-May issue of The Decalogue Journal. This affair proved highly successful from every standpoint and gained many new friends for our Society.

I wish to acknowledge my gratitude to the following members for their splendid cooperation during my term of office. Judges Harry M. Fisher, Samuel B. Epstein, Julius J. Hoffman, and Abraham L. Marovitz. Our First Vice-President Harry A. Iseberg, Second Vice-President Paul G. Annes, Harry D. Cohen, Jack E. Dwork, Samuel L. Antonow, L. Louis Karton, Samuel Allen, Harry G. Fins, Bernard H. Sokol, H. Burton Schatz, Roy I. Levinson, Oscar M. Nudelman, Harry H. Malkin, Saul and Bernard Epton, Elmer Gertz, Nathan Schwartz and David F. Silverzweig.

The Annual Golf Tournament held at St. Andrews Country Club last July was well attended and yielded a profit to our Society. Valuable prizes were contributed by members and friends of The Decalogue Society of Lawyers. I recommend that this year the event be designated the Annual Outing for the reason that so many of our members and guests find enjoyment in out-of-door activities other than playing golf.

I feel greatly indebted to Richard Fischer, Executive Secretary and his assistant Miss Francyne Levin who have performed their duties efficiently and have cooperated in every possible way to make my tasks lighter whenever possible. For their faithful service I express my sincere thanks.

Lawyers possess virtues and ideals. I hold that they are peacemakers in this troubled world. They seek justice. The clergy are concerned with the soul of man; the physicians are concerned with his body; but lawyers are concerned with his rights and liberties. Without lawyers a nation cannot survive very long. When a despot ascends the throne or becomes the head of a government the first thing that he does is to gain control of the courts and suppress opposition lawyers. We need not search ancient history to name a nation whose leader caused the downfall of the government. During our time we have witnessed two vivid examples in Germany and Italy.

The Congress of the United States and the state legislatures are, in the main, composed of lawyers. Lawyers have a wonderful sense of equity. They are suspicious of catch words and half-truths. They are not carried away by the harangues of a crackpot. The United States of America while not a Utopia, is heaven on earth.

The traditions of the legal profession are great and honorable. Lawyers, as a group, are God-fearing and ever ready to help their country, family, relatives, and strangers. My hopes and prayers are that The Decalogue Society of Lawyers will ever remain faithful to the traditions of our honorable profession.

## THE PRESIDENT SPEAKS

President Archie H. Cohen addressed on May 7th, Sailors and Marines of Jewish faith at the Naval Training Center, Great Lakes, Michigan. His subject was "Facing the Future."

On May 18 he spoke on "American Ideals" before the B'Nai B'Rith Council at Omaha, Nebraska. Many B'Nai B'Rith members from nearby cities and towns attended this meeting. Last month he spoke also before a large gathering of the B'Nai B'Rith brotherhood at St. Paul, Minn.

## MAX GAYNES

Member Max Gaynes has been nominated for the post of Judge on the Municipal Court Judicial Ticket.

## IRVING E. GLICKMAN

Member Irving E. Glickman is a nominee for the post of Judge on the Municipal Court Judicial Ticket.

# Tort Actions Between Husband and Wife in Illinois

*Summary of opinion of member, Mr. Justice Ulysses S. Schwartz, in a recent Illinois Appellate Court case sustaining the common law rule barring tort actions between husband and wife.*

The case of *Brandt v. Keller* recently decided by the Appellate Court of Illinois for the First District (opinion by Mr. Justice Ulysses S. Schwartz) holds that the Married Women's Property Act of 1874 did not reverse the common law rule that a woman can not sue her husband in tort. Despite the tremendous increase in the scope of tort liability and the greatly increased use of insurance that would have made such suits more than an intra-family shifting of wealth, the point had not been squarely decided by any previous case in the Illinois courts of review. Indeed, from the fact that there is no record of any decision in Illinois involving a suit by a wife against her husband for personal injuries, Justice Schwartz concluded that there had been a consensus of Bar and Bench that the Act of 1874 did not remove the common law disability.

A test of the effect of the Married Women's Property Act on the right of spouses to sue each other in tort was perhaps inevitable after the recent case of *Welch v. Davis,* 410 Ill. 130. There, the Supreme Court reversed the Appellate Court for the Third District which had denied the right of a wife's administrator to sue her husband's executor under the Wrongful Death Act. The Appellate Court held that the Married Women's Property Act had not removed the wife's disability and that the cause of action created by the Wrongful Death Act was defeated by that immunity which the husband would have enjoyed had he lived. In reversing, the Illinois Supreme Court based its decision solely on the ground that the Wrongful Death Act created an independent cause of action not circumscribed by the limitations which would have been imposed on the intestate, had she lived. The court explicitly stated that it was not passing on the effect of the Married Women's Act and left open the question of a wife's right to sue her husband in tort. Following the lead of the Supreme Court, the Appellate Court for the First District, (First Division) in *Tallios v. Tallios,* 345 Ill. App. 387, held that the husband's immunity does not protect an employer rendered liable by the husband's tortious actions in furtherance of the employer's business. It could be argued that these two cases signalled a judicial attitude of disfavor toward the common law rule which might result in a stretching of the 1874 Act to abolish the disability, at least for female plaintiffs. Plaintiff Brandt's counsel urged that the Brandt case was a proper vehicle by which Illinois might join the current trend, primarily statutory but occasionally aided by judicial legislation, toward the complete abolition of the husband-wife disability.

Unfortunately for Mrs. Brandt, the legal contexts of the *Welch* and *Tallios* cases were not analagous to the one with which she was confronted. In *Welch v. Davis,* the courts had to interpret a statute which was silent on the point at issue and the question was whether or not the common law disability should be judicially interpreted into the statute. The *Tallios* court merely laid down a common law rule in accordance with the weight of authority in other jurisdictions. *Brandt v. Keller* involves simple statutory interpretations. Consequently, the Appellate Court did not have the latitude present in the *Welch* and *Tallios* cases; the familiar rules of statutory construction had to be employed to determine and apply the intent of the legislature. According to those rules as followed out in the exhaustive opinion of Mr. Justice Schwartz, the 1874 Act simply would not bear the interpretation contended for by Mrs. Brandt.

The critical portion of the Married Women's Act for the purpose of the *Brandt* case is Section 1, which reads as follows:

> "That a married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried, and an attachment or judgment in such action may be enforced by or against her as if she were a single woman."

Plaintiff contended that since under prior law married women had had the right to sue any-

one with respect to property, and anyone except their husbands in tort, the only new effect this provision could have had was to allow them to sue their husbands in tort. Plaintiff emphasized the inclusiveness of the words, "in all cases" in support of this argument. These contentions were not persuasive. A reading of the entire act discloses that its provisions were intended to eliminate the disabilities peculiar to married women. The disability in question is a general restriction on both husbands and wives. Clearly, Section 1 of the Act cannot be read as removing the marital disability for both spouses. This follows both from the wording of the section and from the fact that in other sections of the act husbands are mentioned specifically where reciprocal rights are created for them. Thus, the interpretation advanced by plaintiff in the *Brandt* case would erect a new discrimination between husband and wife, a result which would fly in the face of the discrimination-removing purpose of the act. Even the common law, with all its archaic notions of masculine dominance, tried to attain some sort of equality, within the confines of prevailing concepts of the marital relationship, by subjecting the husband to strong discipline in his control over his wife. It would hardly have been the work of enlightenment to pass a statute raising a new discrimination of the grossest sort between husband and wife.

Nor should the long continued acquiescence of the Illinois bar in the construction advanced by defendant be ignored. Chancellor Kent in his Commentaries, Vol. 1. p. 527, 12th Edition, says: "In the construction of statutes, the sense which the contemporary members of the profession had put upon them is deemed of some importance." The lack of wife vs. husband suits is graphic proof that the consensus of those familiar with the law in this field in Illinois must support the view that the 1874 Act did not change the common law rule prohibiting suits between spouses.

Not only the canons of statutory construction, but also the case law of other jurisdictions having similar statutes supports the view that Section 1 of the Act should be construed merely as removing the technical husband-joinder rule. The substantial majority view denies that these statutes had the effect of removing the wife's disability. The United States Supreme Court, in *Thompson v. Thompson*, 218 U. S. 611, held that the District of Columbia statute did not give plaintiff the right to sue her husband in tort. The *Thompson* case has stood as the federal law for over forty years without change either by Congress or by the courts. Missouri, whose statute is most like that of Illinois in its wording, followed the majority view, as do many states whose statutes are phrased in even broader terms than the 1874 Illinois Act. Perhaps the strongest case of this type is *Austin v. Austin*, 136 Mississippi 61. The Mississippi statute provided flatly that "a husband and wife may sue each other." Despite this sweeping language, the Mississippi Supreme Court denied that right of a wife to sue her husband in tort, limiting the statute to property and contract situations where there was discrimination between husband and wife. It is not surprising, in view of this statutory and judicial background, that prior Illinois cases have hinted and Wisconsin Supreme Court has held that the law of Illinois denies the right of a wife to sue her husband in tort, despite the Married Women's Property Act.

Questions of public policy which might have been important had the court been dealing with judge-made law or a more debatable question of statutory construction, as in the *Welch* and *Tallios* cases, did not loom large in *Brandt v. Keller*. Both in the Supreme Court decision and the Appellate Court decision, the prospect of collusion in such actions as against insurance companies was discussed. Disagreeing with the Appellate Court decision in the *Welch* case, Justice Schwartz felt that the danger of collusion between husband and wife to defraud an insurance company was not a valid reason for denying the right of suit between spouses. "The risk of collusion is involved," he said, "in many well recognized actions as one of the hazards in the administration of justice." Furthermore, he concluded the question of insurance is irrelevant; "Insurance companies make their profit by covering risks, and to add another risk is only to give them that much additional merchandise to sell at a profit."

The most important policy consideration, of course, concerns the desirability of continuing the old common law disability. As pointed out

by the Supreme Court in the *Welch* case, the two obstacles which combined at common law to preclude an action by a wife against her husband—the necessity of joining the husband as a party plaintiff, and the ownership by the husband of the wife's property—are now long gone. But the prohibition on suits between spouses may still be defended on the ground that it fosters domestic tranquility. Moreover, to paraphrase Justice Schwartz, our law of domestic relations is already enmeshed in a welter of unrealistic and contradictory rules. Courts are clogged by divorce cases, and disrupted family life is marring the development of thousands of our children; to "add to this area of confusion and litigation is still a debatable question of public policy." In short, there is no overwhelming public necessity that would justify a court in overturning accepted notions and adopting a tortured construction of a seventy-seven year old statute.

It may seem surprising that the question presented by the *Brandt* case had never been litigated previously. The case would certainly have been easier to decide fifty or sixty years ago than it is today. Now it arises in a changed social and legal context, with the immediate pressures and necessities which produced the 1874 Act long since evolved into something new and different. Yet the decision now is the same as it would have been then. The understanding of the bar has been vindicated. Perhaps the law is not a "brooding omnipresence in the sky," but the *Brandt* case serves as a graphic example of how much of it exists outside the statute books and the law reports.

## ELMER IS ACTIVE

A summary of our second Vice-president, Elmer Gertz's latest activities: He was program chairman in connection with the luncheon tribute to the late Ashton Stevens recently held by the Friends of the Chicago Public Library. He is chairman of the Library Committee in the Chicago area of the American Friends of the Hebrew University, and has just been elected president of the famous Civil War Round Table.

## APPLICATIONS FOR MEMBERSHIP

H. Burton Schatz, *Chairman*
Bernard Epton, Joseph Solon, Seymour Velk, *Co-Chairmen*

| *APPLICANTS* | *SPONSORS* |
|---|---|
| Edward G. Bazelon | Harold M. Nudelman |
| Harry C. Diamond | Alexander C. Laurence & Alvin Edelman |
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| Philip Teinpwitz | Maurice S. Levy & Herbert A. Ellis |
| Howard D. Watt | Jerome Garoon |
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## ELECTED TO MEMBERSHIP

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Lionel I. Brazen
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Robert L. Lew
Samuel F. Linn
Sidney W. Mandel
Marvin Pollack

## STUDY JUDICIAL ARTICLE

The proposed draft of The Judicial Article of the Constitution of the State of Illinois has been sent for study to members of the Committee on Judiciary Article by Reuben S. Flacks, chairman of The Decalogue Society Judicial Article Committee.

This draft which is of a far reaching significance has been unanimously approved by the Board of Governors of Illinois State Bar Association and the Board of Managers of Chicago Bar Association. It is expected that The Decalogue Committee will have cogent comments on this important subject within the ensuing days. Members interested in this subject are invited to communicate with Mr. Flacks whose offices are at 10 South LaSalle Street.

**The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Ill.**

# Recent Illinois Supreme and Appellate Court Decisions

By L. LOUIS KARTON

*Notes from a lecture delivered before our Society February 14, under the auspices of our Professional Education Committee. A member of our Board of Managers, Mr. Karton is head of The Appeals Division, Corporation Counsel's office, City of Chicago.*

## International Harvester Company vs. Industrial Commission, 410 Ill. 543

*Reversed and Award Set Aside*

Claimant, Dennis Ballard, filed a claim for compensation against the Wisconsin Steel Works of the International Harvester Company, his employer. The sole question is whether he filed his claim within the one year period.

The application for adjustment of claim was filed more than fifteen months after the alleged injury occurred. The company had an Employee's Benefit Association from which he was paid weekly, and the regulations provided that members who are covered by Workmen's Compensation or Workmen's Occupational Diseases, shall not receive any benefits from the Association for which they are entitled to receive compensation under such laws and, if he does receive compensation, he is obligated to reimburse the Association for payments made.

The evidence showed that the claimant could neither read nor write; that he spoke to the company's physician whom he asked "Am I supposed to draw some compensation for my hurt or draw some more of my insurance?" and was told that he had his choice of accepting insurance payments which ran twenty two dollars a week or eighteen dollars a week under Workmen's Compensation; that he had accepted the twenty two dollars.

The court held that the insurance payments did not resemble compensation and that the law is clear that payments unrelated to provisions of the Workmen's Compensation Act do not amount to payments of compensation which will stay the running of the limitations provision.

In a vigorous dissent by Mr. Justice Schaefer concurred in by Bristow and Hershey, it is argued that the cases cited by the majority opinion do not support it; that here the record shows that the company's employee who handled both Workmen's Compensation claims and claims for association benefits represented to the claimant that benefits payments from the association and payments of compensation under the statute were alternative rights; that this was in fact not so, because the association rules provided that payments were to be made for claims not under the Compensation Act and that while the weekly payments from the association exceeded compensation payments, yet the gross payments under compensation exceeded by one thousand three hundred and twenty eight dollars the amount paid by the association.

## People vs. Douglas McMiller, 410 Ill. 338

McMiller was indicted for murder, waived jury, was tried by the court, found guilty and sentenced to fourteen years in the penitentiary. While the trial court was sentencing him, the court said:

"The finding is guilty of murder beyond any doubt, in my opinion. I happen to know him, one of my star football players. He left there, I know the President out there, and the boy's reputation here was none too good. I always take the liberty of investigating, getting a little idea."

On appeal defendant argued that the court went outside the record to find the defendant guilty. The court said:

"We cannot approve or condone such conduct by the trial judge in a crime case. The search for outside information by the trial judge was wholly improper. The guilt or innocence of a defendant should be determined by the evidence produced in open court, and the consideration of outside matters, obtained through private investigation, is a violation of his constitutional rights."

## People vs. Evelyn Rivers et al. 410 Ill. 401

*Reversed and Remanded*

The defendants were four girls ranging from 14 to 19 years of age who were indicted for murder by shooting Lavon Cain, a 17 year old girl, in the schoolyard near DuSable High School, on the South Side of Chicago. At the conclusion of the testimony, the court stated that without passing upon the guilt or innocence of Helen and Evelyn Rivers and Wilma

Howard, he would prefer a lesser charge than the murder, that he was leaving town for a few weeks and he hoped that by the time he returned there would be a new indictment. Upon his return three weeks later the court discussed his suggestions to counsel, regarding the reduced charge of conspiracy, and before imposing sentence made the following statement:

"If there ever was a cold-blooded, premeditated killing this is one. According to State's Attorney John S. Boyle, there are over 400,000 unlicensed and unregistered guns in Chicago, most of which are exposed to potential murderers and youngsters.

He thereupon pronounced sentence. The court held as it did in the *McMiller* case that it was evident from the complete about-face in the attitude of the judge after his return from his three-week vacation and his reference to the statement of the State's Attorney about unregistered guns and the crimes committed by juveniles that there had been some private investigation by the court. The court said:

"However innocently any private investigation may have been made, for whatever purpose, and regardless of its results, the defendants' constitutional right to have everything considered against them produced in open court has been violated."

## John Gaca vs. City of Chicago, 411 Ill. 141

This appeal involving the constitutionality of Section 1-15 of the Revised Cities and Villages Act enacted in 1945, which imposed upon municipalities having a population of more than 500,000, to indemnify its police officers for any judgment obtained against them for injuries resulting from the performance of their duties as police officers, except for wilful misconduct, where the injured person was not guilty of contributory negligence. The plaintiff was a police officer against whom the judgment in the sum of two thousand three hundred dollars had been entered after a trial by jury on the charge of false arrest. After payment of the judgment he sued the city for indemnification.

The city challenged the validity of the statute on the ground that it was unconstitutional and void because it contravened Section 22 of Article 4 of the Illinois Constitution in that it constituted a special or local law granting a special privilege and special legislation applying only to the City of Chicago and on the further ground that it violated Section 10 of Article 9 of the Constitution which prohibits the General Assembly from imposing taxes upon municipal corporations for corporate purposes. The court had sustained the validity of the statute, had allowed a rehearing and in this decision again sustained the validity of the statute. The court pointed out that classification by virtue of population is valid under the Constitution where the population classification has a reasonable relation to the subject of the legislation. The court points out that a classification will suffice as a basis for legislation if such classification is based on a rational difference of situation or condition; that the classification need not be scientific, logical or consistent provided it is not arbitrary. The court took judicial notice that Chicago was the only city in this population class and asserted that Chicago has traffic density, population density, blight and slum areas, areas of unassimilated foreign elements where crimes are bred and protection is offered fleeing criminals. "Skid rows" where poverty, crime and general disrespect for the law abounds; narcotic rings, hoodlums, gangsters, and racketeers, all of whom pose problems in Chicago that are not found in other parts of Illinois. It also pointed out in commenting on the fact that the Gaca judgment was for false arrest, that in small towns an alert policeman has a wide acquaintance and knows practically everyone living in his territory. Because of all these facts, the court concluded that classifying Chicago for purposes of this statute was a reasonable classification.

The court also held that the risk attendant upon the duties of a police officer demanded special consideration and that a higher wage would result in securing greater efficiency in the service, and held that relieving the policemen in the City of Chicago of the burden of carrying public liability insurance indirectly increases their wages and that such an increase would result in an improvement in the personnel of Chicago's law enforcement agencies.

In a vigorous dissenting opinion, Justices Schaefer and Hershey disagreed with the finding of the majority, arguing that Chicago is not the only city having heavy traffic, slum and crime problems. The minority opinion stated:

"The version of the statute suggested in the majority opinion underscores the serious question which exists

under section 10 of article IX of the Constitution, which prohibits the General Assembly from imposing taxes upon municipal corporations for corporate purposes. That is the question which the majority discusses. In our opinion this constitutional objection is important; it should be squarely faced, and the grounds which underlie the ruling of the majority should be explicitly stated."

## Wallace vs. Annunzio, 411 Ill. 167

This was an appeal from a judgment of the Superior Court of Cook County in an administrative review proceeding in favor of the Director of Labor for a deficiency in plaintiffs contributions under the Illinois Unemployment Compensation Act. The questions involved was whether the individuals officing with plaintiffs patent law firm could be deemed to be employed by plaintiffs within the terms of the Unemployment Compensation Act. Plaintiffs had in their office associates who rented office space under an oral contract, each associate having his own office in the suite with his name on the door. They were required to pay plaintiffs one third of all fees received from their own cases and on work referred by the firm the associates were credited on the firm books with 45 per cent of the fee as and when collected. Out of this 45 per cent credit the associates paid proportionate share of the rent, stenographic and other services. Plaintiffs at no time made social security payments on the percentage of fees credited to the associates.

The Director of Labor took the position that the services of the associates in the firm constituted employment. The court pointed out that although the findings of an administrative agency are deemed prima facie correct, nevertheless they must be supported by substantial evidence and the court has power to review all questions of law and fact presented by the record. The inquiry here is whether the relationship between the firm and the associates constitutes employment. The statutory definition of employment is controlling, rather than any common law master-servant concept.

The court held that this relationship was akin to a partnership or a series of joint enterprises whereby the parties were all principals and that the associates were not rendering services to an employing unit. This conclusion, the court held, was consistent with the broad purpose of the statute in that a group of professional men such as the one under consideration is not ordinarily beset with the hazard of unemployment to the degree that wage earners are. The court points out, perhaps with tongue in cheek, that "professional men" are usually in a position to make provision for reverses and slack periods, and, therefore, do not require legislative protection against such contingencies.

The court emphasizes in another portion of the opinion that where the responsibility was only for results and the work was performed free from control and where, as here, the services were performed within the associates' own offices and with facilities paid for them out of a percentage of the fees credited to them, a landlord and tenant relationship rather than an employer-employee relationship exists.

*Grasse* vs. *Dealer's Transport Company*, Supreme Court, No. 32165 (not yet reported). In a suit by an injured employee and his employer against the owner of a truck whose driver caused the injuries, both parties being under the Workmen's Compensation Act, the Supreme Court held unconstitutional the first paragraph of Section 29 of the Workmen's Compensation Act, now paragraph 138.5 (b) of Chapter 48 (Ill. Rev. Stats. 1951) which had denied the injured employee the right to bring a common law action against the third party causing the injury where both parties were under the Act. In an exhaustive opinion the court reviews its earlier decisions which had held Section 29 constitutional and concludes that the earlier decisions do not close the door to a re-examination of the question under the present Act because this section was never construed under the present Compulsory Act on the points here relied upon.

The constitutional objection that in improper and unreasonable classification has been made is sustained by the court on the theory that the primary purpose of the Workmen's Compensation Act is to afford employees and their dependents a measure of financial protection and that the denial of the right to bring a common law action against third parties is inconsistent with this purpose. Crampton and Hershey dissented.

*Welch* vs. *Davis* 410 Ill. 130, decides a new question in Illinois. Davis shot and killed his wife and himself. Her minor daughter by a

*(Continued on page 17)*

# A JUDGE'S VIEW OF THE GRAND JURY

*Report of Civic Affairs Meeting*
*by* SAMUEL D. GOLDEN

Judge Frank M. Padden of the Superior Court aided the Decalogue Civic Affairs Committee in its current study of the Grand Jury system by presenting some insights he gained from his recent term as Chief Justice of the Criminal Court. The Judge discussed the topic with the group at a luncheon meeting at the Society Headquarters on February 14, 1952. During his term as Chief Justice, Judge Padden was the first to extend a Cook County Grand Jury beyond its 30 day term under the new Illinois law.

Judge Padden defined the Chief Justice's role as one of giving advice: instructing the jury as to their powers and duties, and conferring with them at their request on questions of law. Occasionally the Chief Justice finds it necessary to caution the jury against exceeding their powers or jurisdiction: they should not be permitted to interfere with the constitutional prerogatives of officials and courts, and they should be warned that any public action they take beyond the voting of indictments may subject them to libel suits.

The Committee members asked the Judge whether he thought the Grand Jurors were adequately instructed about their powers. He felt that they are, and that Grand Jurors usually are very intelligent persons. The Judge was asked his opinion about the Michigan "one-man" Grand Jury. He said he feared the dictatorial implications of such a system, but believed it deserved further study.

The Judge felt that more good could be accomplished by examining the workings of the State's Attorney's office. Obviously the Jury must rely almost completely upon the prosecution for the presentation of evidence. This inevitably places much responsibility on the particular assistant state's attorney in charge of Grand Jury hearings. At present, usually one man is assigned there for long periods of time and, while this might make the particular assistant quite "expert" in this work the jury could benefit more from a rotation system applicable to the entire State's Attorney's staff, and, thus afford it a wider viewpoint.

The State's Attorney's office could be improved by giving the staff greater security of tenure and opportunities for promotion. Simply placing the office under civil service, however, would not remove the possibility that cases might be "buried" before the Grand Jury; the State's Attorney himself may still tread lightly on certain cases when political expediency so suggests.

Committee Chairman Elmer Gertz and, Civil Rights sub-committee Chairman Matilda Fenberg announced that the group had decided to consider next Grand Jury experiences in other states, including Michigan.

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## A BOUQUET FOR MEMBER YATES

. . . Chicago owes a pat on the back to Rep. Sidney R. Yates (D-Chicago), who was a leader in the fight for approval of the 50,000 units. He was a member of the conference committee that ironed out the disagreement between the House and Senate. He impressed on his colleagues the desperate need for more housing in Chicago, a vital defense production area.

The Chicago City Council and the federal government several months ago okayed 4,200 apartments for Chicago, including 1,382 scheduled for vacant land sites. Work on all vacant sites now should be started.

In addition blueprints for building 6,062 units in slum areas, which have been approved by the City Council, have been gathering dust in the Federal Housing Administration offices in Washington. Yates said that he will try to get these approved as soon as possible.

—*Chicago Sun Times*

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## EX-PRESIDENTS' CORNER

Mr. and Mrs. Jack E. Dwork announce the marriage of their daughter, Sandra, to Mr. Jack J. Arbit of Chicago on May 31st, 1952 at the Blackstone Hotel.

* * *

Mr. and Mrs. Harry D. Cohen announce the forthcoming marriage of their daughter Toby to Mr. Lawrence Leventhal on August 31, 1952 at the Blackstone Hotel.

# Revenue Act of 1951

*Reviewed by* PAUL G. ANNES

The more important provisions of the Revenue Act of 1951 were revealed by Paul G. Annes at a recent luncheon meeting at the Covenant Club. The lecture was under the auspices of The Decalogue Society of Lawyers Professional Education Committee.

After noting the rate increases and their effective dates, both for individuals and corporations, he gave his attention to the relief provisions in the new Act affecting business. Annes went into considerable length to show the possibilities and problems of the new rules for family partnerships. He then made brief mention of the various "personal" relief provisions, such as the increased personal exemption, the optional character of the standard deduction and the filing of separate returns by married persons, the increased medical deduction for persons over 65 years of age, the operation of the new provisions in the case of a sale and purchase of a residence within stated periods, and certain other changes in this category. This was followed by an example to illustrate the working of the relief available in certain cases involving net operating loss carry-overs, both for individuals and corporations.

Annes further gave a detailed illustration of the effect of the changes in the law concerning Capital Gains and Losses (available to individuals only); he then mentioned the new limitations on sales and exchanges to spouses and "controlled" corporations.

The principal discussion of this part of the lecture concerned the possibilities of and limitations on the use of the extension for 1952 of Section 112 (b) (7) governing "tax-free" corporate liquidations; the permanent extension of the corporate debt cancellation provisions involving realization of income, the new relief provisions in cases of corporate "spin-offs;" and, finally, the changes in the Excess Profits Tax Law of benefit to "new" corporations.

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*Justice is like the Kingdom of God. It is not without us as a fact; it is within us as a great yearning.*

—GEORGE ELIOT

## VISITOR FROM ISRAEL

Major Gideon Margalith, formerly with the Israel Air Force, a lawyer, and a representative of The Palestine Economic Corporation, addressed our Board of Managers at a luncheon on Friday, May 16, at the Covenant Club.

The visitor drew a vivid picture of Israel's everyday life, and told of the young country's needs and its immediate problems.

Major Margalith, a native Israeli, spoke confidently of the new nation's ability to cope with its present difficult economic plight but, he added, outside help is essential for the long range program ahead. He spoke gratefully of the already large measure of help that came from the United States. The Major spoke also, about Israel's legal profession and courts, and insisted that the United States' way of life and administration of justice is the most attractive standard for Israel citizenry to follow.

## JUSTICE WILLIAM O. DOUGLAS TO ADDRESS JUNE 12th, LAWYERS DIVISION, COMBINED JEWISH APPEAL

Justice William O. Douglas of the United States Supreme Court will be the principal speaker Thursday, June 12th, at the annual Combined Jewish Appeal, Lawyers Division dinner.

The glad tidings of Justice Douglas' acceptance of the invitation to address the Lawyers Division reached the Decalogue Journal at press time. Mr. Reuben L. Freeman, Chairman Lawyers Division, will shortly send a special announcement to the legal profession in Chicago naming the subject of the Justice's address and place of the meeting.

Members of our Society are urged to reserve the evening of June 12th for this outstanding occasion.

# Should the Grand Jury be Abolished?

By SAMUEL A. HOFFMAN

*Member Hoffman is a former assistant state's attorney, Cook County, and a vice-president of The Exchange National Bank.*

Democracy has encountered many trials in its growth toward maturity. It has sometimes assumed the burden of outworn political customs. One such impediment is the grand jury system. A vestige of the ancient Roman judiciary, it has changed little in essence from its forbear, and has not in fact lost entirely the character of an essentially feudal system.

In Caesar's time a jury of 20 citizens whose verdict was unchangeable sat in judgment on Rome's citizenry. With the coming of civilization in Europe the idea of a jury was adopted as the most equitable means of inquiry. A form of jury existed in England under Edward the Confessor, but the King still believed in temporal power; so the supreme judge was still the King, and justice was determined by his whims. It was not until the convention of Barons forced King John to sign the Magna Carta at Runneymede in 1215 that the King's power in the jury system was actually challenged in so far as the Barons were concerned.

Little thought was yet given to the need of justice for the common man. Even the protection of the baronial rights did not remain untarnished. After 1253 the English grand jury was made up of 12 men chosen from every hundred of the population of a county seat. The jurors were selected by the sheriff, and were generally henchmen of the throne who had the power of stifling independent expression. Strictly an accusing body, the jury had no power of trial.

The jury system was carried west to America to find an already established counterpart in an Indian political custom. During early Western settlement vigilantes submitted the innocence or guilt of defendants to a panel chosen from the crowd. The Constitution of the United States eventually adopted the jury system, and the 5th Amendment stated that such a panel is necessary in all criminal trials except impeachment, and that such a trial must take place in the State where the crime was allegedly committed. The various States through their Constitutions adopted similar provisions.

For the first fifty years of federal government the place of the grand jury was scarcely questioned. The rivalry between the rural and urban elements of the country gradually entered politics, and the grand jury system offered a ready weapon for that faction which had control of the government at that time. By 1935 twenty states had done away with the grand jury, and many others had limited its power.

In Illinois, the grand jury is still part of the system of justice. The judicial system of Illinois in this respect differs very little from the days of old when a body of the populus determined the need of trial for a defendant.

According to our statutes a quorum of the jury consists of 16 men of the maximum 23. Its sole power is to discover if there are sufficient reasons for holding the accused for trial, or, in the case of public investigations, whether there is enough evidence to warrant major governmental action. Its decision stands unless a motion to quash, to dismiss, can be sustained, in which case a new jury may be called to review the case.

Perhaps the most fundamental perfidy of the instrument is the scandalous way in which it is subject to political misuse. The jury list is chosen arbitrarily by the county commissioners and is then passed on to the sheriff, who may summon jurors from that file. Thus, from the beginning the potential group of jurors may be made up of only those people whom it is to the interest of the commissioners to employ. Not only has this system utility as a means of packing the jury in favor of a certain group which may find special advantage in the outcome of the investigation. Many of the men coming into the court, therefore, have particular reasons for wishing a certain preconceived outcome to the trial. Once these men come into court a judge has no means of reforming

the panel except by the rejection of the members for some good cause which it is within his power as mediator of the court to determine generally; such causes are either misconduct as a member of the panel or actions which may be noted as contempt of court.

Since a man may be brought to trial only upon the indictment of a grand jury, it is quite possible that a packed jury may set free many a man who should otherwise stand trial as a criminal. Certainly the decision of the jury may be nullified by quashing, or by a sustained request to demur, but obviously, there is no reason to believe that if a jury has been packed once it cannot be packed again. Occasionally enough interest can be aroused in the public mind to make it dangerous to continue with a fraud jury; but unfortunately the popular mind is noted for a far greater laxity toward matters that do not directly concern it than toward situations closely affecting its daily life.

An example of this is the great amount of energy that has been utilized in the past few years in an attempt to arouse the nation to reform in the case of packed grand jury panels on negro lynching trials in the South. No conclusive reform has resulted, and certainly no great change has resulted in the Southern system, as any current newspaper account will readily indicate.

A thorough review of the proceedings of grand jury cases throughout the country would affirm time and time again the validity of these attacks against the system. Only a native apathy to our duty as citizens allows us to overlook the dangers of this grand jury system with its medieval nature, and its monarchical measure of justice.

It seems only logical that the people of the United States would be prone to accept a new structure which tended to correct the mistakes of the grand jury system. Possibly many solutions may be recommended, but space permits only an investigation of the one that seems to this author most plausible.

Since the work of the grand jury is of such an important and technical nature, it seems correct to assume that the responsibility for this work should be directed into the hands of persons trained to weigh fact and assertion and distinguish what is and what is not legally true. It is generally only the legalist himself who has become acquainted with operations of government and their effect on the individual, and it is he who may best determine whether the need for trial actually exists.

Therefore does it not seem correct that this legalist should assume the responsibility for the direction of justice, just as does that larger body of judges, The Supreme Court? If the grand jury could be made to function as a permanent body in much the same way that the Supreme Court operates, many of the errors of the system would be eradicated.

A standard body, of let us say nine men, appointed to their positions for the rest of their lives, (or until such time as they voluntarily resign) would be less likely to fall under the shadow of political machination. Knowing that their position exists regardless of the fluctuation of political power, they could act free of bribery and political log-rolling or plum-pulling. Prejudices introduced by the fear of loss of work due to power politics need not make them overlook some important shred of evidence because it was to their advantage to do so.

Departmental strife would be less subject to judicial proceedings merely because the panel of jurors would be divorced economically from any dependence on a particular governmental department for its income. Since each department would have become aware that "pull" was of little consequence in its judicial adventures, it would have to look elsewhere for a public airing of private difficulties.

In essence the decision of each grand jury would tend to have a greater value in the determination of justice. The tendency to allow a criminal to go free because of political packing and bribery would have decreased, but so would the problem of vicious character assassination. Since a jury of known legalists would be less likely to succumb to the showmanship of name calling, and would tend more to weigh what really did exist as evidence, the lawyer would eventually have to resort to tactics of a genuine legal nature rather than to those of false or semi-false accusation and assertion.

Finally the element of personal morale cannot help entering a discussion of this sort. Gradually the criminal as well as the general

public would have to come to realize that the further trial of the accused man was decided upon on the basis of facts indicating that there was some element of doubt in the case. In this way a man could still feel himself innocent until proved guilty.

The remedial effects of a grand jury system made up of a permanent group of legalists, then, would be the following:

1. *It would tend to remove the important investigatory branch of the legal department of government from the use of political groups in seeking specific decisions through the use of packed courts.*

2. *It would tend to lessen, through the elimination of these packed courts, the possibility of private departmental feuds becoming public "knifing" cases.*

3. *Because its members would be members of the legal profession less subject to the influence of name-calling, the danger of deliberate character assassination would tend to decrease.*

4. *Since the decision of the jury would be that of a group of men trained in the art of separating fact from fiction, the move for a petit jury trial would represent a move for further investigation of the matter rather than a preconceived decision that a man is guilty. In this way a man would not be quilty until so proved after a further investigation of facts has been made.*

The very fact that such possibilities for correction exist, make it seem logical that the constitutional provisions now regulating the use of the grand jury should be changed and new regulations enacted.

Each year presents new opportunities, through the ballot and through citizens action, to reform our grand jury system. Eventually we must face the issues and come to a mature recognition of the dangers of the present system. Why hesitate any longer to throw off political adolescence and face the real challenge of establishing a grand jury system that complements a democratic society?

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## SILVERZWEIG REELECTED

Past President David F. Silverzweig was reelected President of the Chicago Council, American Jewish Congress. Members Paul G. Annes and Byron S. Miller were elected vice-presidents. The Chicago Council, including its affiliated organizations, represents a membership of more than forty thousand people in the Chicago area.

## Lawyer's LIBRARY

The *Editor* earnestly suggests close examination of the titles listed below.

### *New Books*

Bander, Robert. *Cases on commercial law.* Brooklyn, Foundation Press, 1951. 687 p. $8.00.

Belli, Melvin M., Sr. *The use of demonstrative evidence in achieving "The more adequate award."* San Francisco, the Author, 1952. 40 p. $1.00.

Bernays, E. L. *Public relations.* Norman, University of Oklahoma Press, 1952. 352 p. $5.00.

Brin, J. G. *Applied semantics.* Boston, Bruce Humphries, 1951. 189 p. $3.00.

Casner, A. J., editor-in-chief. *American law of property.* Boston, Little, Brown, 1952. 6 v. & 1 v. Index. $100.00.

Clark, Charles E. *Clark's cases on modern pleading.* St. Paul, West, 1952. $10.00.

Cochran, H. P. & Others. *Current tax problems.* Pittsburgh, University of Pittsburgh Press, 1951. 93 p. $2.50.

Ford, Peyton, Reich, David & Palmer, C. W. *The government lawyer; a survey and analysis of lawyers in the executive branch of the United States Government.* New York, Prentice-Hall, 1952. 37 p. Gratis. (Report prepared for the Survey of the legal profession).

Glueck, Sheldon, ed. *The welfare state and the national welfare; a symposium.* Cambridge, Mass., Addison-Wesley Press, 1952. 289 p. $3.50.

Latham, Earl. *The group basis of politics; a study in basing-point legislation.* Ithaca, N. Y., Cornell University Press, 1952. 244 p. $3.75.

Miller, Merle. *The judges and the judged;* foreword by Robert E. Sherwood. Garden City, Doubleday, 1952. 220 p. $2.50.

Neumann, Inge S., comp. *European war crimes trials.* A bibliography. New York, Carnegie Endowment for International Peace, 1951. 113 p. $1.00. (Mimeo.)

New York University, School of Law. 1951 *Annual survey of American Law.* New York, Prentice-Hall, 1951. 915 p. $10.00.

Parsons, M. B. *The use of the licensing power by the city of Chicago.* Urbana, University of Illinois Press, 1952. 198 p. Paper $3.50.

Spring, Samuel. *Risks and rights in publishing, television, radio, motion pictures, advertising and the theatre.* New York, Norton, 1952. 385 p. $7.50.

Vale, R. R. *Justice, science, and religion as contributions to civilization.* San Francisco, C. W. Taylor, Jr., 1951. 198 p. $3.50.

Wright, D. M. *The impact of the union.* New York, Harcourt Brace, 1951. 405 p. $4.00.

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# Changes in the Law – Last Forty Years

*From an address by Professor Zechariah Chafee Jr., before the Rochester Bar Association, published in the January 1952 issue of the Boston University Law Review. Condensed by Member Louis J. Nurenberg.*

Among our professional brethren in medicine, for instance, have come surprising new drugs and marvelous techniques in surgery. How about the law? Have we similar reasons for pride in the achievements of the last four decades?

Let me begin with four great changes since 1910. First, and to me the most gratifying, is the enactment throughout the country of Workman's Compensation Acts, which revolutionized the legal handling of industrial accidents. The employer was not subject to his usual responsibility for the negligence of his employee if the injured person also worked for the defendant. When the rule began a century ago, the judicial idea was that the workmen had plenty of opportunity to hold each other to careful habits, so that they, rather than the employer, took the risk of an associate's recklessness. This theory made sense when everybody worked together in one room, but it went askew as soon as the railroads developed and a locomotive engineer might be hurt by the carelessness of an operator in a signal-tower a hundred miles down the line from the victim's home.

Just forty years ago this month, the legislature of New York, distinguished itself under the governorship of Charles Evans Hughes by making the first attempt in this country to work out a better legal solution for industrial accidents.

Some economic interpreters of law have stigmatized the Fellow-Servant rule as wholly due to the blind selfishness of rich men and their judicial friends, but this is an inadequate understanding of the situation a hundred years ago. It was harsh to throw the loss from an accident on a single employee, but the only alternative was to throw it on a single employer, which was also harsh. It was the advent of liability insurance, unknown a century ago, which enabled the law to take the loss off the shoulders of any one man, either the workman or the employer, and instead to spread it over all businesses and eventually over the whole community through absorption in prices. This concept of sharing is characteristic of the whole forty years.

The second and much less agreeable event is the Federal Income Tax. Joseph Choate's denunciation of a two per cent income tax as socialism is a wry joke while we pay the percentages of recent years. Moreover, the income tax was just the forerunner of many other forms of federal taxation.

Suppose a lawyer is asked whether a new enterprise should be a partnership or a corporation. He cannot give his full attention, as formerly, to learning which plan is better suited to the nature of proposed business or will bring in the needed capital more satisfactorily, and whether the partnership will give dangerous powers to individuals who are not to be wholly trusted. Nowadays, the lawyer's principal question will be—which plan carries the greater tax burden? In advising a married testator about his potential widow's share in the estate, the wife's competence to handle investments and her prudence in making gifts to dependents and charities have become insignificant factors. The real job is to make inheritance taxes as low as possible.

The third great change is in labor relations. In 1910 the chief legal control of these was through the labor injunction. I now feel that a court cannot settle the right wage the way it can settle the right boundary-line between lots.

Today by the Wagner Act, the major control is vested in federal administrative officials. An equally noteworthy change is the much wider scope of legal action. The law does not wait for a strike or single out one factory. All factories and the entire relationship between employers and workmen are made the subject of concern. We hope to lessen the evils of strikes, low wages, and long hours by bringing the whole of industry within legal consideration. The focus has shifted from the occasional bitter conflict to the almost universal formation and fruitful observance of bargains between labor management. Tort law has largely been superseded by a new kind of contract law.

The isolated breakdown, the single employer, are merged into an overall situation. The law treats the employer as a member of the community. Once more, the law makes an individual share in a general responsibility.

The National Labor Relations Board is typical of a fourth new situation, the growth of administrative bodies with wide powers. The first impulse of the bar was to block the new administrative bodies by judicial review, so as to transfer as much as possible of the determination of facts back to courts. The more recent and wiser attitude of lawyers toward these bodies is not to block but to guide. We are worrying now about such problems as how to obtain impartial deciders and how to get an adequate consideration by the officials who make the final decisions.

It is significant that administrative boards go beyond isolated disputes into overall regulation of the activities under their supervision. Besides determining the rights of particular litigants, they often have to consider what is best for a whole range of associated enterprises. Once more, the individual is subordinated to the community.

Along with emergence of these new branches of law, the older subjects have not stood still. Take Contracts, for example. You remember the man who offered his friend fifty dollars if he could climb to the top of a greased pole. The malicious offeror stood at the bottom, comfortably watching the straining ascent. Just as the offeree was about to put his hand on the top of the pole, the man on the ground yelled "I revoke" and did not have to pay a cent. Nowadays, the offeror does have to pay something.

Another principle of contracts impressed upon us was that in bilateral contracts both sides were bound or neither. Yet many have gone through renegotiation proceedings on war contracts and discovered that the client was firmly bound whereas the government was at liberty to rewrite some of the most important terms of the bargain as much as it wanted. Even in purely private transactions like the establishment of an automobile agency, the old principle has got badly battered. The dealer is tied tight but the manufacturer of cars is very little bound. Still, in spite of this situation in many different types of modern agreements, it is important for the written contract to furnish satisfactory guides to conduct in order that the parties will want the relation between them to continue.

The subject of bank collections is still treated as a series of contests between two isolated litigants. The bankers protect themselves by sweeping clauses on deposit slips giving them everything but the right to take the customers' bonds out of his safe deposit box.

Much more is at stake than the attainment of immunity for banks. Everyone of us pays most of his debts without using government-issued money. He makes transfers of deposit currency through checks. Therefore, the real problem is to make deposit currency as close as possible to five dollar bills. Whenever the particular deposit currency exists—of course, the drawer must have an adequate balance behind his check—then the purpose of the law of bank collections ought to be to spread all the possible disasters of the collection process over the whole community, instead of throwing them on one depositor of a check or one signer of a check or one bank.

Just as workmen's compensation, old age pensions, automobile liability insurance, deposit insurance, etc., diminish the losses of the individual by spreading them thin over a large group, so taxation, rationing, etc., diminish the benefits of the individual and spread them thin over a large group. The second process is far less agreeable to the man affected, but it is the inevitable concomitant of the first.

Even in the days of rugged individualism, losses were shared by neighbors through sacrifices of their time and effort. If a couple died leaving young children, uncles and aunts came forward as a matter of course and brought up the youngsters as if their own. In sickness and fires, help was immediately forthcoming. Resources were pooled for corn-huskings and barn-raisings.

It is a far cry from this human intimacy to the impersonality of the income tax blank and the priority orders of the War Production Board. A community can no longer meet in a room and share, but we go on sharing just the same.

I refuse to be misled or excited by catchwords like free enterprise or socialism. The public began taking over activities from paid individuals with the post-office and the little red schoolhouse, and there is no obvious stopping point. The recurrent question is whether work will be better done by human beings selected, trained, supervised, and encouraged or discouraged by politicians and legislators and official superiors, than if it is performed by human beings in the organization and atmosphere of private business.

Looking back, then, to the time when I entered law school (1910) I feel sure that we lawyers have good cause to be proud of the progress made by the law. Its substantive rules and the methods of administering justice are far better fitted to straighten out human relations than they were forty years ago.

## HONORED

Paul G. Annes, First Vice President of The Decalogue Society, was awarded the Distinguished Alumnus Citation by the University of Chicago on June 7, 1952. The award is made each year to several alumni of more than twenty five years' standing for notable contributions in public service.

## Supreme & Appellate Court Decisions

(*Continued from page* 10)

former marriage brought suit against the executor of the estate of her stepfather and obtained a verdict. Motion for judgment N.O.V. was granted, the Appellate Court affirmed and the Supreme Court reversed. The court held that the common law prohibition against a suit by wife against husband did not prevent the recovery in this case. The court discussed the extent to which Married Women's Acts had eliminated the various common law limitations on the rights of women and concludes that the reason for the common law limitations no longer exists; the court's conclusion is that the liability for torts existed, but the bar was a personal one and will not be extended to defeat the cause of action of one who derives through the wife. This case is followed in *Tallios* vs. *Tallios,* 345 Ill. App. 387.

# BOOK REVIEWS

*"Books are standing counselors and preachers, always at hand, and always disinterested; having this advantage over oral instructors, that they are ready to repeat their lesson as often as we please."*
—T. W. CHAMBERS

*Guilty or Not Guilty?*, by Francis X. Busch, Bobbs-Merrill Company, Inc. 287 pp. $3.50.

*Reviewed by* BERNARD H. SOKOL

This book, written by one of Chicago's eminent trial attorneys, contains an account of the trials of Leo Frank, D. C. Stephenson, Samuel Insull, and Alger Hiss.

Many will recall the Leo Frank case of 1913 which involved the sex murder of a young girl in Atlanta, Georgia, and which ultimately, after the defendant's conviction and commutation of sentence, resulted in one of the most notorious lynchings in this nation's history.

The D. C. Stephenson case, even more sordid, is remembered principally because the defendant was the head of the Indiana Klan at the time and the case, although a murder trial, was unquestionably effected by the position of the defendant in Indiana politics.

The Samuel Insull case is well known as the first "banker" case to follow the financial debacle of the early 30's.

The Hiss case, being current, is, of course, familiar to every one.

This is a companion to another book written by the same author which contains accounts of other trials. The author brings to his book a singular competence, having a tremendous fund of experience in the trial of cases far beyond that of the conventional attorney.

He invites the reader to become "the 13th juror," which would suggest that the presentation would be one of cases where guilt or innocence were so in doubt that a miscarriage of justice might easily have occurred. Only in the Leo Frank case, however, does Mr. Busch suggest a possibility. In the account of the Insull case, it appears that the question of intent in a mail fraud case always is open to two constructions; however, the facts which are recorded here do not allow for much uncertainty. It may be that a bit more description of the "water" in the Insull empire might have posed for the reader a bit more consideration as to whether Mr. Insull was a fraud or not. Too much in this report reads like an apology.

In his preface, Mr. Busch has indicated that he was influenced to some extent by the popular "Notable British Trial" series, which, in their presentation, contain much of the testimony and arguments in the cases. In Mr. Busch's opinion these are too technical for the general public. In his desire to correct this and make the accounts more understandable, he has paraphrased the testimony and other material —a bit too much, I believe. Some of the testimony, some of the court's instructions, and, particularly, the summations of the lawyers, or excerpts therefrom, would bring the tales closer to the promise of the high key drama present in the cases. Mr. Busch might well have emulated the comparative series published by Doubleday, Doran & Co., Inc., which, to a limited extent, imitates the English form and gives a fuller treatment and a more vivid picture.

The book is diverting, light, and easily read, and as long as the reader has no similar work to compare it by, fares rather well.

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*Legal Aid in the United States*, by Emery A. Brownell. Published by The Lawyers Cooperative Publishing Company, Rochester, New York. $4.50.

*Reviewed by* MATILDA FENBERG

This book was published for the Survey of the Legal Profession but should be read by every citizen of our country. It is a study of the availability of Lawyers' Services for Persons Unable to Pay Fees. Seventy-five years of American experience in providing free legal service for both civil and criminal cases are reviewed and evaluated in collaboration with distinguished experts in both fields and correspondents appointed for each state.

It is based upon careful research and a straight forward appraisal of the needs of all citizens for lawyers' services. It summarizes the extent, nature and adequacy of the existing facilities whereby persons unable to pay fees may secure equal justice. It contains thirty-nine supporting tables, five charts and four appendices which include a directory of Legal Aid offices for 1951.

Brownell's book is a complete picture of the present status of legal aid, a survey of its history, a statement of its philosophy, and a glimpse into its future. It is the most authoritative and comprehensive compilation of the facts concerning Legal Aid in the whole United States.

Legal Aid means providing lawyers for persons who are unable to pay fees for legal services. Its object is to make it impossible for any man, woman, or child in the United States to be denied the equal protection of the laws simply because they are poor. This study points out that Legal Aid is an essential part of the

administration of justice in a democracy. It shows that the primary responsibility for the establishment and maintenance of an adequate number of legal aid officers and committees in all parts of the nation is one of the cardinal obligations of the legal profession.

It is true that there are millions of persons in the United States who are unable to pay for lawyers' services but through and by the leadership, support and services of lawyers, more Legal Aid is provided in the United States than in any other country in the world. These services given by the Legal Profession have now been accepted as the professional obligation of the bar.

The House of Delegates of the American Bar Association concurred with the Association's Assembly on September 21, 1950 and resolved as follows:

"(1) It is the primary responsibility of the legal profession, as part of its high tradition of service to the public as an expression of its devotion to the ideal of equal justice for all, and in order to forestall the threat to individual freedom implicit in growing efforts to socialize the legal profession, to assume through its bar associations and in conjunction with other social and welfare agencies, the leadership in establishing and maintaining adequate organized Legal Aid facilities in all parts of the country.

"(2) Legal Aid facilities should be established and maintained as far as possible as a privately supported community service and in any event, without governmental control or influence over their operations."

All citizens should be protected in their legal rights, and not only those who can pay for such protection, and the coming generation of lawyers will see to it that the services of lawyers are available to all who need them.

Reginald Heber Smith, Director of the Survey of the Legal Profession, in his introduction to this volume states:

"The legal profession in the United States is growing in power, prestige, and in its sense of public and social responsibility. It is learning to do its work through its bar associations which are today, despite obvious defects, full of promise. While the bar must lead in the future growth of Legal Aid, it cannot succeed without the understanding and cooperation of the American people themselves. The fact from which we must always start and to which we must always return, is that in America the people are the masters and the lawyers are their agents, advocates and servants."

The severe strain which world events have put upon free democracies in recent times has underscored the importance of strengthening our institutions for the service of individuals and especially the administration of justice as the surest way of making invulnerable our heritage of freedom.

Elihu Root is quoted:

"It is the proper function of government to secure justice. In the broad sense that is the chief thing for which government is organized. Nor can any one question that the highest obligation of government is to secure justice for those who, because they are poor and weak and friendless, find it hard to maintain their own rights."

In 1926 Chief Justice Taft wrote:

"The real practical blessing of our Bill of Rights is in its provisions for fixed procedure securing a fair hearing by independent courts to each individual. But if the individual in seeking to protect hmself is without money to avail himself of such procedure, the Constitution and the procedure made inviolable by it, do not practically work for the equal benefit of all. Something must be devised by which every one, however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set fixed machinery of justice going."

Jacob M. Lashly, while he was President of the American Bar Association, gave the following for a minimum Legal Aid program:

"The goal is as obvious as it is essential. We must so plan it, and organize it, and build it, that there is a nationwide network of legal aid offices. In every city or every county there must be a definite office, as well known to the public as the court house itself, to which poor persons, in need of advice and assistance can apply."

Mr. Brownell ends his report with the statement that the object of the law is to protect the dignity and worth of every human being, whatever his income. The individual does not exist to serve the State. The State exists to serve the individual. American history demonstrates that our national strength is founded on individual opportunity and freedom. If law is to fulfill its important mission, the facilities of Legal Aid in the United States must be materially strengthened, for here is the tested and exclusive means of assuring that every citizen stands equal before the Law.

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*Accounting for Lawyers*, by A. L. Shugarman, Bobbs-Merrill Company. 550 pp. $15.00.

*Reviewed by* MAX A. REINSTEIN

This book, as the title implies, was written for the express purpose of acquainting lawyers with the basic concepts of accounting. The author, is an associate professor of accounting at Western Reserve University and is both a lawyer and a certified public accountant. With this background, he is in an admirable position to key his approach to the subject in a manner suitable to the needs of practicing attorneys.

The first twelve chapters set out the multifarious journal entries, which express the workings of business in its day-to-day existence. These chapters the author describes as: Part 1, "Basic Concepts and Procedures;" in Part 2, consisting of ten chapters, designated "Financial Statements," develop the subject

material by bringing the reader to the preparation, analysis and interpretation of the financial statements; in Part 3, the concluding portion of the book, entitled "Business Associations and Legal Relationships," he discusses the various types of accounting systems to be found in the legal relationships which the average attorney encounters in the course of his practice, e.g., estates, trusts, partnerships, etc.

In his handling of the subject matter, the author has done a creditable job in reducing to simple and comprehensible language the accounting concepts daily employed in the world of business. Through the copious use of examples and illustrations, he makes an understanding of the subject relatively simple. As a matter of fact, it is thought that in some instances the simplification process is carried to an extreme and could be the cause of some embarrassment if the reader were to accept completely some of the author's premises. As in everything else, so too in accounting, ideas, complex by their very nature, do not lend themselves to over-simplification.

The last portion of the book, dealing with the accounting systems employed in different types of businesses and legal relationships, is probably the most interesting part of the work. It is here, however, that the author seems to wander afield somewhat in discussing in too great detail the accounting systems employed in such complex relationships as home-office and branch; consignor and consignee accounts. The average attorney I believe is little interested in the workings of such systems and would probably be more anxious to understand some of the accounting aspects of the income tax laws for example.

This is a volume that should be used by the average lawyer as a reference book to apprise him of the basic principles underlying the field of accountancy. Due credit is to be accorded the author for the splendid manner in which he presented, in simple form, what is concededly a difficult subject matter. His skillful use of plenteous illustrations and examples does much to accomplish this end. Also, there are frequent references to the effect of legislation upon the bookkeeping systems. All in all, this is a worthwhile work and could be a useful tool to the busy lawyer who is everlastingly plagued with references to accounting dogma in his every day practice.

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*Prisoners at the Bar,* by Francis X. Busch. The Bobbs-Merrill Company, Inc. 288 pp. $3.50.

*Reviewed by* ELMER GERTZ

This is an account of the famous trials of William Haywood, Sacco and Vanzetti, Loeb and Leopold, and Bruno Hauptmann by Francis X. Busch, himself a distinguished Chicago trial lawyer. Based largely on the courtroom records, there is in these stories much of the breathless drama of the cases. This book will interest both lawyers and laymen. Lawyers in particular may profit from Mr. Busch's meticulous and analytical summary of the maze of evidence. Implicit in these pages is the proof that there is no sure recipe for legal success unless it be painstaking preparation, calmness of bearing, shrewdness of vision, and common sense, all as exemplified in the career of Clarence Darrow. This greatest of all of Chicago's many criminal lawyers is the hero of the book. He it was who saved William Haywood and Loeb and Leopold from the gallows, Haywood to go scot free and the murderers of Bobbie Franks to travel the long dark night of imprisonment.

Having a contemporary's knowledge of three of the cases covered by Mr. Busch, I found that his words helped me to relive some stirring experiences. The account of the Loeb-Leopold case is particularly vivid and fair. It does not minimize the brutal savagery. At the same time the elements in the case which were so cogently argued by Darrow are given their due. Mr. Busch does not say so; but one feels that if Nathan Leopold is ever paroled, as is likely, there will be the possibility of redemption in him.

"I do not know how much salvage there is in these two boys," Darrow had said with amazing candor in his closing argument. "I will be honest with this Court as I have tried to be from the beginning. I know that these boys are not fit to be at large. I believe they will not be until they pass through the next stage of life, at forty-five or fifty. Whether they will be then, I cannot tell." Language such as this, shot through with sincerity, made Darrow a great lawyer and a great man. In his Haywood argument, perhaps the most moving speech he ever delivered, he was even more eloquent and profound.

Only the account of the Sacco-Vanzetti case is a disappointment to me, largely because Mr. Busch has made no effort to plumb the depths of soul of the "good shoe-maker and poor fish-peddler." Mr. Busch is so impressed by the mass of evidence against the two men that he seems to forget that when the facts are as much in dispute as here one must be guided somewhat by a study of the personalities. I must confess that I am troubled by the guns worn by the two men, the ballistic evidence, the testimony of eye-witnesses, and much besides—even if there is good evidence contradicting some of the state's case. What still persuades me of their innocence is their ex-

emplary conduct during the long years of travail prior to their execution; their heart-breaking utterances in letters and in conversation. No case ever touched so many decent people as this one. Mr. Busch has not given an adequate account of this aspect of the story; but one must readily admit that he is scrupulously fair and accurate in his reporting of the facts. As a shrewd lawyer he should know that it is necessary always to learn the truth beyond the facts.

This I think he has done well in his account of the trial of Bruno Hauptmann for the murder of the Lindbergh child. One senses that this cold-blooded Teuton was exactly the kind of criminal who could kill a baby and then collect ransom without a moment's remorse and go to his death in silence when caught. Of course, there are unanswered questions. How could he have done what he did without accomplices and with so little first-hand knowledge of the Lindbergh home? But reading the evidence, one feels that justice was done.

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*Free Enterprise and Economic Organization*, by Louis B. Schwartz, The Foundation Press, Inc. 1215 pp. $9.00.

*Reviewed by Member* SHELDON O. COLLEN

Mr. Schwartz, who is Professor of Law in the University of Pennsylvania, has authored this latest book in the widely used University Casebook Series. It is a collection of cases and other materials for courses on government regulation of business. As the author points out, his book differs from similar collections in that he has excluded materials on unfair trade practices, e.g. false advertising, trademark infringement and interference with competitor's contract relations. In contrast, he has included such matters as patents, public utility regulation, public ownership and agricultural controls which are not ordinarily found in trade regulation courses. This selectivity was based on the thought that whereas the law of unfair trade practices simply sets the "plane" of legitimate competition, it is not as fundamental to an understanding of our economico-legal philosophy as is the comparison of antitrust competitive principles and the noncompetitive norms of, for example, public utility and patent law.

The study of the antitrust laws remains, however, the necessary foundation of this type of book. In his introductory essay the author says:

"The great problem of our society is to retain the production incentive of risk-rewarded capital, which necessarily implies a capitalist-laborer relationship in which the laborer gets less than the whole product of his effort, while at the same time to prevent the over-concentration and abuse of power which such a relationship lends itself to. The antitrust laws help to bring about this adjustment by setting limits on the centralization of private economic power and by preserving the independence of judgment of a mutitude of small capitalists."

Mr. Schwartz has tried to order the long parade of cases by making liberal use of notes and comments of his own together with excerpts from law review articles, monographs, texts and other books, reports of government bodies and similar materials.

The trend to such inclusion, which has been approved generally, carries with it, however, the danger that the student is apt to imbibe a ready made rationale of the cases in contrast to working out his own.

The book is divided into two major parts: Part I is entitled "Control of the Right to do Business" and begins with the familiar agreement not to compete as the nucleus of devices restricting competition. This is followed by chapters on elimination of competitors by purchase (merger, consolidation, stock control); elimination of competitors by control of markets or materials; exclusion from trade by patent or copyright monopoly; and a final chapter on monopolies granted by the State—franchises and certificates of public convenience and necessity. Part II is entitled "Control of Prices" and considers price control by private agreement; trade associations and their influence on prices; resale price control by manufacturers and distributors; price control under patents and copyrights; economic controls by labor unions; public utility regulation; price discriminations, agricultural controls; controls in a defense economy; and, finally, government enterprize.

Virtually all of the definitive cases are either printed in full or noted and commented upon. Mr. Schwartz has made no mention, however, of the rather important question of limitations applicable to antitrust causes of action. The old law that limitations effect only the remedy and not the right is small consolation to a litigant who finds his action barred. With all the attention that Congress has given to trade regulation it nonetheless never enacted a statute of limitations applicable to private actions for damages under the antitrust laws. The result has been that the federal courts have applied state statutes of limitations. In this condition of affairs a private litigant in Tennessee, for example, has ten years in which to bring an action while in Illinois, as the bar recently discovered in *Hoskins Coal and Dock Co. v. Truax Traer Coal Co.* 191 F (2d) 912 (CA-7), cert. den.—U. S.—, he has only two years, on the theory that an action for treble

damages under the antitrust laws is "an action for a statutory penalty" within the meaning of that phrase as used in Ill. Rev. Stat. Ch. 83, sec. 15.

On the distaff side, Mr. Schwartz's book contains a good table of contents, table of statutes, and table of cases, but it is lacking a subject matter index, which is sometimes very useful. This neglect may be perhaps attributed to the publisher's conception of economy.

## JUDGE JACOB M. BRAUDE

Judge and Mrs. Jacob M. Braude are visiting in Israel. They expect to return home early in July. Judge Braude, a former financial secretary of The Decalogue Society of Lawyers, is a candidate for reelection on the November judicial ticket.

*. . ."Nothing can be more repugnant to the true genius of the common law than such an inquisition into the consciences of men. . . It substitutes for the established and legal mode of investigating crimes and inflicting forfeitures, one that is unknown to the Constitution and repugnant to the genius of our law."*

—ALEXANDER HAMILTON On Test Oaths

## SORROW

The Decalogue Society of Lawyers announces with deep regret the death of the following members:

Irving Abrams (141 W. Jackson Blvd.)
Elkan Berger
Bernard Brown
Julius L. Handelman
Max Simpson
Nathaniel A. Lawrence
Edward S. Newberger
Sidney Schneider
Sidney Traistar

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